



RECEIVED

NOV 24 2003

DAE

Please type a plus sign (+) inside this box —

OFFICE OF PETITIONS

PTO/SB/21 (08-00)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)		<b>Application Number</b>	10/087,060
		<b>Filing Date</b>	February 27, 2002
		<b>First Named Inventor</b>	Etsuro Saito; Yuuichi Motomura
		<b>Group Art Unit</b>	2878
		<b>Examiner Name</b>	Not Known
<b>Total Number of Pages in This Submission</b>	42	<b>Attorney Docket Number</b>	21778.05600

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form  <input type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment / Response  <input type="checkbox"/> After Final  <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Express Abandonment Request  <input type="checkbox"/> Information Disclosure Statement <input checked="" type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Response to Missing Parts/ Incomplete Application  <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application)  <input type="checkbox"/> Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application  <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Request for Refund  <input type="checkbox"/> CD, Number of CD(s)	<input type="checkbox"/> After Allowance Communication to Group  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <b>Return Postcard</b>
<b>Remarks</b> The Commissioner is hereby authorized to charge any fees (or credit any overpayment) associated with this communication and which may be required under 37 CFR 1.78 to Deposit Account No. 50-2603, referencing Attorney Docket No. 351778.05600. A Duplicate sheet is attached.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Doyle B. Johnson Reed Smith Crosby Heafey
Signature	
Date	November 19, 2003

CERTIFICATE OF MAILING			
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on this date: November 19, 2003			
Typed or printed name	Norma E. Gillespie		
Signature		Date	November 19, 2003

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

RECEIVED  
NOV 03 2003

Paper No. 6

DOYLE B. JOHNSON  
CROSBY, HEAFEY, ROACH & MAY  
SUITE 2000  
2 EMBARCADERO CENTER  
SAN FRANCISCO, CA 94111

COPY MAILED

OCT 31 2003

In re Application of  
Etsuro Saito et al  
Application No. 10/087,060  
Filed: February 27, 2002  
Attorney Docket No. 351778.05600

OFFICE OF PETITIONS RECEIVED

DECISION ON PETITION NOV 24 2003  
UNDER 37 CFR 1.78(a)(3)

OFFICE OF PETITIONS

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 24, 2003, and supplemented by facsimile transmission on October 29, 2003 to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of PCT Application No. PCT/JP01/05921, filed July 6, 2001 set forth in the amendment filed October 29, 2003.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

TECHNOLOGY CENTER 2800

NOV 28 2003

RECEIVED

Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

The instant pending application was filed on February 27, 2002, and was pending at the time of filing of the instant petition. A reference to the prior-filed PCT application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed PCT application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed PCT application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. See 35 U.S.C. §§ 120 and 365(c). Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the prior-filed PCT application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

**The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.**

A corrected Filing Receipt, which includes the priority claim to the prior-filed PCT application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 2878 for consideration by the examiner of applicant's claim under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (2) for the benefit of priority to the above-noted, prior-filed PCT Application No. PCT/JP01/05921, filed July 6, 2001.



Frances Hicks  
Lead Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

**ATTACHMENT:** Corrected Filing Receipt